

Watkins & Johnson

31069

87-06



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I. AUTHORITY

A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act and delegated to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrator by EPA Delegation Nos. 14-14-c and 14-8-A. This authority has been redelegated to the Director, Toxics & Waste Management Division, EPA, Region 9.

B. Watkins-Johnson consents to and does not contest EPA jurisdiction regarding this Consent Order and agrees that it will not contest EPA's authority to enter into or enforce this Order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Watkins-Johnson are:

A. To conduct the Remedial Investigation ("RI") described in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan"), a copy of which is attached as Attachment A and by this reference made a part of this Consent Order, in order to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Watkins-Johnson Stewart Division manufacturing plant in Scotts Valley, California. The RI/FS

1 Work Plan specifies work to be performed during the Remedial  
2 Investigation. A list of reports, documents, and other  
3 deliverables that Watkins-Johnson will provide for EPA review,  
4 comment and/or approval is found in the RI/FS Work Plan.

5 B. To conduct the Feasibility Study ("FS") described in  
6 the RI/FS Work Plan evaluating remedial action alternatives  
7 to prevent and eliminate the release or threatened release  
8 of hazardous substances, pollutants, or contaminants at or  
9 from the Site.

10 C. To conduct the activities required by this Consent  
11 Order in a manner approved by EPA and consistent with the  
12 National Contingency Plan (NCP), 40 C.F.R. Part 300.61 et  
13 seq., as amended.

14 D. After the completion of the RI/FS, EPA will evaluate  
15 and select the remedial action alternative consistent with  
16 the NCP to achieve the goal of preventing and mitigating the  
17 release of hazardous substances, pollutants or contaminants  
18 at or from the Site.

### 19 III. BACKGROUND

20 A. Respondent Watkins-Johnson Company ("Watkins-Johnson")  
21 owns and operates an electronics components manufacturing plant  
22 located at 440 Kings Village Road, Scotts Valley, California.  
23 The plant and the adjacent contaminated areas are referred to  
24 in this Order as "the Site."). The plant covers approximately  
25 3 acres. Watkins-Johnson has owned and operated the plant since  
26 1965.

1 B. Industrial processes at the plant have included  
2 among others, electroplating and degreasing which used solvents,  
3 acid solutions, caustic solutions, cyanide solutions and metals.  
4 Chemicals used at the facility have included trichloroethylene  
5 (TCE), and others listed in the RI/FS Work Plan.

6 C. In 1984, public agencies received information that TCE  
7 had been discharged into the Watkins-Johnson septic system.  
8 Samples taken from the system's dilution tank showed pure  
9 solvent material (97% TCE and 3% trichloroethane (TCA)). Soil  
10 samples taken in May-June 1984 showed levels of TCE, TCA,  
11 dichloroethylene (DCE), and perchloroethylene (PCE) at the  
12 Site. In subsequent activities, Watkins-Johnson discovered  
13 levels of contaminants including TCE in groundwater samples  
14 taken from monitoring wells at the Site.

15 D. The California Regional Water Quality Control Board  
16 (Water Quality Board) issued Abatement Order 84-81 in late May,  
17 1984. Watkins-Johnson, in collaboration with the Regional  
18 Water Board, developed an interim clean-up plan, which included  
19 four phases: a clean-up strategy with target goals; an  
20 implementation plan for clean-up techniques; a clean-up program;  
21 and a long-term post clean-up monitoring program.

22 E. In October, 1986, after consultations with State and  
23 local agencies, the interim clean-up program began. Contaminated  
24 water was extracted and processed through an activated carbon  
25 filter system. The system remains in operation and currently  
26 filters approximately 360,000 gallons per day of contaminated  
27 water. While a possibility exists that there may be additional  
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1 sources of TCE in the contaminant plume from adjoining land uses,  
2 Watkins-Johnson has assumed full responsibility for cleaning up  
3 the contaminated groundwater.

4 F. Monitoring wells have shown contaminants at the Site in  
5 two water-bearing zones, known respectively as the "perched  
6 zone," and the "Santa Margarita Formation," or "Regional Aquifer."  
7 Groundwater in the Santa Margarita Formation in the vicinity of  
8 the Site generally moves toward the northwest. A deeper  
9 water-bearing zone, known as the "Lompico Formation," also  
10 underlies the Site.

11 G. No known domestic wells exist in the presently identified  
12 plume of contamination. Municipal wells drawing from the Santa  
13 Margarita Formation exist upgradient from the plume of contamination  
14 within one mile of the Site. Other wells within a one mile radius  
15 of the Site may be used for domestic, agricultural, and/or industrial  
16 purposes.

17 H. Bean Creek, a tributary of the San Lorenzo River, runs  
18 alongside the Site, to the north. In 1986, TCE and DCE were  
19 observed in Bean Creek near the Site. Present and anticipated  
20 potential beneficial uses of Bean Creek include municipal and  
21 domestic supply, recreation, ground water recharge, wildlife  
22 habitat, and fish spawning and rearing habitat.

23 I. In March, 1987, TCE contamination was found 1800 feet  
24 northwest of the facility, in two wells screened in the Santa  
25 Margarita Formation operated by Silverking Oceanic Farms.

26 J. In January, 1987, three months after the interim clean-up  
27 program commenced, EPA proposed the Site for the National Priorities  
28 List (Superfund List).

#### IV. CONCLUSIONS OF LAW

1       A. The Site is a "facility" as defined in Section 101(9)  
2 of CERCLA, 42 U.S.C. §9601(9).

3       B. Watkins-Johnson is a "person" as defined in Section 101  
4 (21) of CERCLA, 42 U.S.C. §9601(21).

5       C. Chemicals identified in soil and groundwater at the  
6 Site, mentioned in Article III above, are "hazardous substances"  
7 as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

8       D. The past, present, and potential migration of hazardous  
9 substances from the Site constitutes an actual or threatened  
10 "release" as defined in Section 101(22) of CERCLA, 42 U.S.C.  
11 §9601(22).

12       E. Watkins-Johnson is a potential responsible party  
13 pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

#### 14       V. DETERMINATIONS

15       Based on the facts and conclusions of law presented in  
16 Articles III and IV above, EPA has determined that:

17       A. The actual and/or threatened release of hazardous sub-  
18 stances from the Site may present an imminent and substantial  
19 endangerment to the public health or welfare or the environment.

20       B. The actions required by this Consent Order are necessary  
21 to protect the public health, welfare and the environment and  
22 are consistent with CERCLA and the NCP.



VI. WORK TO BE PERFORMED

All response work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site investigations. Prior to initiation of site work pursuant to this Order, Watkins-Johnson shall notify EPA in writing of the name, title, and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed by Watkins-Johnson:

A. Watkins-Johnson shall perform the tasks and submit reports contained in the RI/FS Work Plan (Attachment 1). This work shall be consistent with all applicable requirements of the NCP and shall be conducted in accordance with EPA RI/FS guidances ("Guidance on Remedial Investigations Under CERCLA," June, 1985 and "Guidance on Feasibility Studies Under CERCLA," June, 1985), with supplemental guidance from EPA to reflect provisions of the Superfund Amendments and Reauthorization Act; and with the standards, specifications, and schedule contained in the approved RI/FS Work Plan. The RI/FS Work Plan, as agreed to, is not subject to Dispute Resolution (Article XII) procedures.

B. Deliverables to be submitted are listed below. This listing includes the type of review that EPA will conduct (either "Review and Comment" or "Review and Approve"). Each deliverable must include the contents for the deliverable

1 described in the RI/FS Work Plan. The descriptions in the RI/FS  
2 Work Plan are meant as a framework for each deliverable's  
3 content. Open discussions between Watkins-Johnson and EPA will  
4 be necessary to assure that deliverables contain sufficient  
5 detail. Any reports, plans, specifications, schedules, and  
6 attachments required by this Consent Order are, upon approval  
7 by EPA, incorporated into this Consent Order. Any non-compliance  
8 with such EPA approved reports, plans, specifications, schedules,  
9 and attachments shall be considered a failure to achieve the  
10 requirements of this Consent Order and will subject Watkins-  
11 Johnson to the provisions included in the "Stipulated Penalties"  
12 Section (Article XIII.) of this Consent Order. No penalties  
13 shall be imposed under this Consent Order until the final date for  
14 deliverable work has passed without receipt by EPA of the  
15 deliverable product in acceptable form.

16 C. The deliverables shall consist of:

- 17 1. Assessment of Existing Hydrogeologic and Contamination  
18 Source Data: Draft for EPA review and comment; Final for EPA  
19 review and approval.
- 20 2. Health and Safety Plan for EPA review and comment.
- 21 3. Quality Assurance Project Plan (QAPP): Draft for EPA  
22 review and comment; Final for EPA review and approval.
- 23 4. Sampling and Analysis Plan (SAP): Draft for EPA review  
24 and comment; Final for EPA review and approval.
- 25 5. Well Survey and Potential Conduits Evaluation: Draft for  
26 EPA review and comment; Final for EPA review and approval.
- 27 6. Report on Regional Zone Characterization, Perched Zone  
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1 Characterization, Determination of the Potential for Contaminants  
2 to Migrate to the Lompico Formation, and Aquifer Testing for  
3 EPA review and comment.

4 7. Report on Ground-Water Flow Model, Solute Transport  
5 Model, and Aquifer Restoration Schemes for EPA review and comment.

6 8. Soil Investigation Report for EPA review and comment.

7 9. Potential Receptor Survey for EPA review and comment.

8 The information contained in deliverables 6-9, including any  
9 further interpretation or related information requested by  
10 by EPA will be included in the Remedial Investigation Report  
11 (#12, below) for EPA approval.

12 10. Monthly Progress Reports for EPA review and comment.

13 11. Quarterly Progress Reports for EPA review and comment.

14 12. Remedial Investigation (RI) Report: Draft for EPA  
15 review and comment; Final for EPA review and approval.

16 13. Preliminary Remedial Alternative Development Technical Memo  
17 for EPA review and comment.

18 14. Remedial Alternative Screening Report: Draft for EPA  
19 review and comment; Final for EPA review and approval.

20 15. Detailed Analysis and Comparison of Alternatives  
21 Report: Draft for EPA review and comment; Final for EPA review  
22 and approval.

23 16 Feasibility Study (FS) Report: Draft for EPA review and  
24 comment; Final for EPA review and approval.

25 D. EPA shall review, comment, and if appropriate, approve  
26 or disapprove each report, document or other deliverable.

27 EPA shall notify Watkins-Johnson in writing of EPA's approval,  
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1 disapproval or if additional review time is required. In the  
2 event of any disapproval EPA shall specify the reasons for  
3 such disapproval and recommend modifications regarding the  
4 disapproval.

5 E. Watkins-Johnson shall submit its final deliverables  
6 according to the schedule in Section 5.0 of the RI/FS Work Plan.  
7 Final deliverables shall incorporate EPA's written comments and  
8 recommendations.

9 F. Watkins-Johnson may begin dispute resolution procedures,  
10 as provided by Article XII, if appropriate, after it receives  
11 EPA's approval or disapproval of the final deliverable.

12 G. Documents, including progress and technical reports,  
13 approvals, disapprovals, and other correspondence to be submitted  
14 pursuant to this Consent Order, shall be sent to the following  
15 addressees or to such other addresses as the parties hereafter  
16 may designate in writing, and shall be deemed submitted on the  
17 date received by EPA or Watkins-Johnson.

18 1) Three copies of documents to be submitted to EPA shall  
19 be sent by overnight mail to the EPA Project Coordinator designated  
20 pursuant to Article VII of this Order, U.S. Environmental Protection  
21 Agency, 215 Fremont St. San Francisco, CA 94105

22 Additional copies of documents shall be submitted to EPA upon  
23 request.

24 2) Copies of documents to be submitted to EPA shall be sent  
25 by first-class mail to the agencies listed below, to the contact  
26 person designated by the respective agencies.  
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- 1 Calif. Regional Water Quality
- 2 Control Board
- 3 Central Coast Region
- 4 1102A Laurel Lane
- 5 San Luis Obispo, CA 93401
- 6 General Manager
- 7 Scotts Valley Water District
- 8 4860 Scotts Valley Drive
- 9 Scotts Valley, CA 95066
- 10 Santa Cruz County
- 11 Environmental Health Services Dept.
- 12 701 Ocean St., Rm. 400
- 13 Santa Cruz, CA 95060
- 14 City of Scotts Valley
- 15 City Hall
- 16 Scotts Valley, CA 95066
- 17 San Lorenzo Valley Water District
- 18 P.O. Box H
- 19 Boulder Creek, CA 95006
- 20 City of Santa Cruz
- 21 809 Center St.
- 22 Santa Cruz, CA 95060
- 23 Calif. Dept. of Health Services
- 24 Toxic Substances & Control Div.
- 25 North Coast Section
- 26 5850 Shellmound Ave., Ste. 390
- 27 Emeryville, CA 94608
- 28 Calif. Dept. of Health Services
- Sanitary Engineering Section
- 2151 Berkeley Way
- Berkeley, CA 94704
- Monterey Bay Unified Air
- Pollution Control Dist.
- 1164 Monroe, Ste. 10
- Salinas, CA 93906-3596
- Calif. Dept. of Fish & Game
- P.O. Box 49
- Yountville, CA 94595
- Santa Cruz County
- Planning Dept.
- 701 Ocean St.
- Santa Cruz, CA 95060

1 3) Two copies of documents to be submitted to Watkins-Johnson  
2 shall be sent to Treasurer, Watkins-Johnson Company, 3333  
3 Hillview Avenue, Stanford Research Park, Palo Alto, CA 94304.

4 H. EPA may determine that additional work, including  
5 remedial investigatory work, engineering evaluation, and interim  
6 response measures, is necessary as part of the RI/FS. Discussions  
7 with the Watkins-Johnson project manager and revision of the  
8 RI/FS work schedule, if appropriate, will precede any final  
9 determination that additional work is necessary. Watkins-  
10 Johnson shall implement any additional work which EPA determines  
11 is necessary as part of the RI/FS. The additional work shall  
12 be completed in accordance with the standards, specifications,  
13 requirements and schedule determined or approved by EPA. The  
14 time deadline for performance of any activity dependent on  
15 additional work will be extended by EPA for an amount of time  
16 equal to that required to perform the additional work, unless  
17 the dependent activity can be implemented in a shorter time.

18 VII. DESIGNATED PROJECT COORDINATORS

19 A. On or before the effective date of this Consent Order,  
20 EPA shall designate a Project Coordinator who shall have the  
21 authorities, duties, and responsibilities vested in the Remedial  
22 Project Manager by the National Contingency Plan. Watkins-Johnson  
23 shall also designate a Project Coordinator. Both Project  
24 Coordinators shall be responsible for overseeing the implement  
25 ation of this Consent Order. The EPA Project Coordinator  
26 will be EPA's designated representative at the Site. To the  
27 maximum extent possible, all oral communications between Watkins-  
28

1 Johnson and EPA concerning the activities performed pursuant  
2 to this Order shall be directed through the Project Coordinators.  
3 All documents, including progress and technical reports,  
4 comments, recommendations, approvals, disapprovals, and other  
5 correspondence concerning the activities performed pursuant to  
6 the terms and conditions of this Consent Order, shall be  
7 delivered in accordance with paragraph VI(G) above.

8 B. EPA and Watkins-Johnson each have the right to change  
9 their respective Project Coordinators. Such a change shall be  
10 accomplished by notifying the other party in writing at least  
11 one week prior to the change.

12 C. Consistent with the provisions of this Consent Order,  
13 the EPA Project Coordinator shall also have the authority vested  
14 in the On-Scene-Coordinator (OSC) by the National Contingency  
15 Plan, unless EPA designates a separate individual as OSC, who  
16 shall then have such authority.

17 D. The absence of the EPA Project Coordinator or OSC from  
18 the Site shall not be cause for the stoppage of work.

#### 19 VIII. QUALITY ASSURANCE

20 Watkins-Johnson shall use quality assurance, quality  
21 control, and chain of custody procedures in accordance with the  
22 Quality Assurance Project Plan approved by EPA as part of the  
23 RI/FS Work Plan.

#### 24 IX. SITE ACCESS

25 To the extent that Watkins-Johnson requires access to land  
26 other than land it owns or controls, Watkins-Johnson will use its  
27 best efforts to obtain access agreements for itself, its con-  
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tractors and agents, EPA, its contractors and agents, and from the present owners or lessees as the need for such access may arise. In the event that Watkins-Johnson is not able to obtain access to property owned or controlled by persons or entities other than Watkins-Johnson, Watkins-Johnson shall immediately notify EPA in writing regarding both the lack of, and efforts to obtain, such access.

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

A. At the request of EPA, Watkins-Johnson shall provide to EPA and/or its authorized representatives splits or duplicates of any samples collected by Watkins-Johnson as part of the RI/FS Work Plan. Watkins-Johnson shall notify EPA of any planned sample collection activity in the preceeding monthly report. Watkins-Johnson shall notify EPA of any other environmental sampling which it performs at the Site not less than 48 hours in advance of the sampling activity. At the request of Watkins-Johnson, EPA shall provide to Watkins-Johnson any results from its analysis of split or duplicate samples.

B. Watkins-Johnson shall permit EPA, and/or its authorized representative to have reasonable access at all times to the Site to monitor any activity conducted pursuant to the RI/FS Work Plan or conduct such tests or investigations as EPA deems necessary.

C. Watkins-Johnson shall permit EPA and/or its authorized representative to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, that in any way concern soil, ground water, surface



1 water or air contamination at the Site. Watkins-Johnson shall  
2 have access to any nonprivileged or unclassified information  
3 pertaining to the RI/FS to the extent that such information  
4 would be available under the Freedom of Information Act (FOIA)  
5 without being obliged to file a formal request for such  
6 information under the FOIA.

7 D. The EPA Project Coordinator or designate requesting  
8 access to the facility shall notify Watkins-Johnson's Project  
9 Coordinator or designate upon arrival at the facility. All  
10 parties with access to the facility pursuant to this article  
11 shall comply with the approved Health and Safety Plan, and all  
12 other security and health and safety requirements normally in  
13 effect at the facility.

14 E. At the request of Watkins-Johnson, EPA will provide  
15 split or duplicate samples to Watkins-Johnson of any samples  
16 collected by EPA at the Site and the test results from such  
17 samples. If EPA collects any samples or undertakes any testing  
18 work pursuant to the Work Plan, it will notify Watkins-Johnson  
19 not less than 48 hours in advance of the sample collection or  
20 testing and permit Watkins-Johnson to observe the work.

21 F. Watkins-Johnson may assert a confidentiality claim,  
22 covering part or all of the information requested by this  
23 Consent Order pursuant to 40 C.F.R. §2.203(b). Analytical  
24 data shall not be claimed as confidential by Watkins-Johnson.  
25 Information determined to be confidential by EPA will be  
26 afforded the protection specified in 40 C.F.R. Part 2, Subpart  
27 B. If no such claim accompanies the information when it is  
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1 submitted to EPA, it may be made available to the public by  
2 EPA without further notice to Watkins-Johnson.

3 XI. RECORD PRESERVATION

4 EPA and Watkins-Johnson agree that each shall preserve,  
5 during the pendency of this Consent Order and for a minimum of  
6 six (6) years after termination of this Consent Order, separate  
7 central depositories of the records and documents (including  
8 computer databases) required to be prepared under the RI/FS  
9 Work Plan. If EPA requests that some or all such documents be  
10 preserved for a longer period of time, Watkins-Johnson shall  
11 either comply with that request or permit EPA to obtain or  
12 copy any such document prior to its destruction. Watkins-  
13 Johnson shall notify EPA of the address(es) of the depository  
14 (ies) and shall provide access to EPA at all reasonable times.

15 XII. DISPUTE RESOLUTION

16 If Watkins-Johnson objects to any EPA decision, pursuant to  
17 Article VI, Watkins-Johnson shall notify EPA in writing of its  
18 objections within fourteen (14) calendar days of receipt of the  
19 decision. EPA and Watkins-Johnson will then have an additional  
20 fourteen (14) calendar days from the receipt by EPA of the not-  
21 ification of objection to reach agreement. At the end of the  
22 fourteen (14) day discussion period, EPA shall provide a  
23 written statement of its decision, including the legal and  
24 technical basis for the decision, to Watkins-Johnson. The  
25 imposition or amount of stipulated penalties is not subject to  
26 Dispute Resolution. The Dispute Resolution provision or EPA's  
27 decisions pursuant to this provision do not grant or imply  
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1 jurisdiction to any court to review EPA's decisions pursuant  
2 to this Order. Use of the dispute resolution provision will  
3 not relieve Watkins-Johnson's duty to complete the other tasks  
4 in a timely manner in accordance with the set Jule.

5 XIII. STIPULATED PENALTIES

6 A. Except with respect to any extensions allowed by EPA  
7 in writing, or excused by the provisions of Article XIV (Force  
8 Majeure), for each day in which Watkins-Johnson fails to submit  
9 a report or document, or in which Watkins-Johnson otherwise  
10 fails to achieve the requirements of this Order, Watkins-Johnson  
11 agrees to pay the sum set forth below as stipulated penalties.  
12 These penalties shall accrue commencing upon EPA's written  
13 determination of disapproval, as specified in Article VI, or upon  
14 the failure of Watkins-Johnson to meet the schedule specified in  
15 the RI/FS Work Plan (Attachment 1), or upon written notice from  
16 EPA to Watkins-Johnson that a violation of this Order has occurred.  
17 The imposition or amount of penalties are not subject to Dispute  
18 Resolution (Article XII). Dispute Resolution shall not stay  
19 the accrual of these stipulated penalties.

20 B. Stipulated penalties shall accrue in accordance with  
21 paragraph XIII(A) above in the amount of \$5,000.00 per day for  
22 the first week of violation; \$10,000.00 per day for the second  
23 week of violation; and \$20,000 per day thereafter.

24 C. These penalties shall accrue until receipt by EPA of a  
25 revised deliverable which cures the deficiencies or performance  
26 by Watkins-Johnson of the identified tasks to EPA's satisfaction,  
27 in accordance with the requirements of this Consent Order.  
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1 Penalties shall accrue during a dispute under the provisions of  
2 Article XII, supra, but will not be demanded during the dispute  
3 provision procedure. If Watkins-Johnson loses the dispute upon  
4 final resolution, pursuant to Article XII, Watkins-Johnson agrees  
5 to pay the penalties upon EPA's demand. Neither the invocation  
6 of the Dispute Resolution measures nor the payment of the penalties  
7 alters Watkins-Johnson's obligations to complete performance  
8 under this Consent Order.

9 D. The stipulated penalties will be payable upon demand  
10 by the Director, Toxics and Waste Management Division, U.S.  
11 EPA, Region 9, by check made payable to the United States  
12 Treasury addressed to:

13 U.S. Environmental Protection Agency  
14 Superfund Accounting  
15 P.O. Box 371003M  
Pittsburgh, PA 15251

16 Watkins-Johnson shall send a copy of the transmittal letter and  
17 check for any penalty paid to the EPA Project Coordinator.

18 XIV. FORCE MAJEURE

19 A. Watkins-Johnson shall perform all the requirements of this  
20 Consent Order according to the time limits set out in the RI/FS  
21 Work Plan unless its performance is prevented or delayed by  
22 events which constitute a force majeure.

23 B. For the purposes of this Order, a force majeure is defined  
24 as any event arising from causes entirely beyond the control of  
25 Watkins-Johnson. Economic hardship shall not be considered an  
26 event beyond the control of Watkins-Johnson and shall not trigger  
27 the force majeure clause. Watkins-Johnson's inability to obtain  
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1 access to property owned by others shall be considered a  
2 circumstance beyond the control of Watkins-Johnson if Watkins-  
3 Johnson has complied with Article IX ("Site Access"). Watkins-  
4 Johnson shall have the burden of proving by clear and convincing  
5 evidence that any delay is or will be caused by events entirely  
6 beyond its control.

7 C. In the event of a force majeure, the time for performance  
8 of the activity delayed by the force majeure shall be extended  
9 for the time period of the delay attributable to the force majeure.  
10 The time for performance of any activity dependent on the delayed  
11 activity shall be similarly extended, except to the extent that  
12 the dependent activity can be implemented in a shorter time.  
13 EPA shall determine whether subsequent requirements are to be  
14 delayed and the time period granted for any delay. Watkins-  
15 Johnson shall adopt all reasonable measures to avoid or minimize  
16 any delay caused by a force majeure.

17 D. In the event of a force majeure, Watkins-Johnson shall  
18 notify EPA's Project Coordinator orally within forty-eight (48)  
19 hours, and shall within seven (7) days of the oral notification  
20 notify EPA in writing of the anticipated length and cause of the  
21 delay. The written notification shall also state the measures  
22 taken and/or to be taken to prevent or minimize the delay, and  
23 the time table by which Watkins-Johnson intends to implement the  
24 delayed activity. Failure of Watkins-Johnson to comply with the  
25 force majeure notice requirements will be deemed an automatic  
26 forfeiture of its right to request a delay.

1  
2                                   XV. RESERVATION OF RIGHTS

3           A. Notwithstanding compliance with the terms of this Consent  
4 Order, including the completion of an EPA approved Remedial  
5 Investigation and Feasibility Study, Watkins-Johnson is not  
6 released from liability, if any, for any actions beyond the terms  
7 of this Consent Order taken by EPA respecting the Site. EPA  
8 reserves the right to take any enforcement action pursuant to  
9 CERCLA and/or any other legal authority, including the right to  
10 seek injunctive relief, monetary penalties, and punitive damages  
11 for any violation of law or this Consent Order; provided, however,  
12 if Watkins-Johnson pays the demanded Stipulated Penalties for any  
13 particular instances of noncompliance with this Order, Watkins-  
14 Johnson shall not be required to pay other monetary penalties  
15 for that particular instance of non-compliance.

16           B. EPA expressly reserves all rights and defenses that it  
17 may have, including EPA's right both to disapprove of work  
18 performed by Watkins-Johnson and to request that Watkins-Johnson  
19 perform tasks in addition to those detailed in the RI/FS Work  
20 Plan, as provided in Article VI, paragraph G of this Consent  
21 order. EPA reserves the right to undertake removal actions  
22 and/or remedial actions at any time. EPA reserves the right to  
23 seek reimbursement from Watkins-Johnson for all costs consistent  
24 with the NCP incurred by the United States.

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2                                   XVI. REIMBURSEMENT OF COSTS

3           A. Within 120 days of the effective date of this Consent  
4 Order, EPA will submit to Watkins-Johnson an accounting of all  
5 response and oversight costs incurred by EPA associated with  
6 this Site to the effective date of the Consent Order. In  
7 addition, at the end of each year, EPA shall submit to Watkins-  
8 Johnson an accounting of all response and oversight costs  
9 incurred by the U.S. Government with respect to this Consent  
10 Order. Watkins-Johnson shall, within 60 calendar days of  
11 receipt of that accounting, remit a check for the amount of  
12 those costs made payable to the Hazardous Substance Response  
13 Trust Fund. Checks should specifically reference the identity  
14 of the Site and be addressed to:

15                   U.S. Environmental Protection Agency  
16                   Superfund Accounting  
17                   P.O. Box 371003M  
                  Pittsburgh, PA 15251  
                  Attention: Collection Officer for Superfund

18 A copy of the transmittal letter and check shall be sent to the  
19 EPA Project Coordinator.

20           B. EPA reserves the right to bring an action against  
21 Watkins-Johnson pursuant to Section 107 of CERCLA, 42 U.S.C.  
22 §9607, for recovery of all response and oversight costs incurred  
23 by the United States related to this Consent Order and not  
24 reimbursed by Watkins-Johnson, as well as any other unreimbursed  
25 past and future costs incurred by the United States in connection  
26 with response activities conducted at the Site.

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2                                   XVII. OTHER CLAIMS

3           Nothing in this Consent Order shall constitute or be  
4 construed as a release from any claim, cause of action or  
5 demand in law or equity against any person, firm, partnership,  
6 or corporation not a signatory to the Consent Order for any  
7 liability it may have arising out of or relating in any way to  
8 the generation, storage, treatment, handling, transportation,  
9 release, or disposal of any hazardous substances, hazardous  
10 wastes, pollutants, or contaminants found at, taken to, or  
11 taken from the Site.

12                                   XVIII. OTHER APPLICABLE LAWS

13           All actions required to be taken pursuant to this Consent  
14 Order shall be undertaken in accordance with the requirements of  
15 all applicable local, state, and federal laws and regulations  
16 unless an exemption from such requirements is specifically pro-  
17 vided by EPA in accordance with CERCLA or the NCP.

18                                   XIX. COMMUNITY RELATIONS/PUBLIC COMMENT

19           EPA will implement a Community Relations Program in accord-  
20 ance with Agency policies and guidance documents. Watkins-  
21 Johnson may participate in community relations activities  
22 organized by EPA, when deemed appropriate by EPA.

23                                   XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

24           Watkins-Johnson agrees to indemnify and hold the United  
25 States Government, its agencies, departments, agents, con-  
26 tractors, and employees, harmless from any and all claims or  
27 causes of action arising from or on account of acts or omissions  
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1 of Watkins-Johnson, its officers, employees, receivers, trustees,  
2 agents, or assigns, in carrying out the activities pursuant to  
3 this Consent Order. EPA is not a party in any contract involving  
4 Watkins-Johnson at the Site.

5 XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

6 In consideration of the communications between Watkins-  
7 Johnson and EPA prior to the issuance of this Consent Order  
8 concerning its terms, Watkins-Johnson agrees that there is  
9 no need for a settlement conference prior to the effective  
10 date of this Consent Order. Therefore, the effective date of  
11 this Consent Order shall be the date on which it is signed by  
12 EPA.

13 No informal advice, guidance, suggestions, or comments by  
14 EPA regarding reports, plans, specification, schedules, and any  
15 other writing submitted by Watkins-Johnson will be construed as  
16 relieving Watkins-Johnson of its obligation to obtain such  
17 formal approval as may be required by this Consent Order.

18 The attached Work plan is agreed to subject to public  
19 comment received during the official public comment period  
20 following the signing of the Order. EPA may make changes to  
21 the Work plan based on the public comment within a reasonable  
22 time after receipt of the comments. If Watkins-Johnson does  
23 not agree to incorporate those changes in the Work plan, EPA  
24 reserves the right to withdraw its consent and take any action  
25 it deems proper, including conducting the RI/FS itself.

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IT IS SO AGREED AND ORDERED:

WATKINS-JOHNSON COMPANY

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By H. Richard Johnson  
H. Richard Johnson  
President

By David Bernstein  
for/ Jeff Zelikson  
Director, Toxics & Waste Division  
United States Environmental  
Protection Agency, Region IX

Watkins-Johnson Company

C. Louise Beer  
C. Louise Beer, Secretary  
Watkins-Johnson Company

Jon K. Wactor  
Jon K. Wactor  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region IX

Date: 9/21/87

Date: 9/21/87